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Attorneys for Plaintiff
VINCENT KHOURY TYLOR

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

VINCENT KHOURY TYLOR,)	CIVIL NO. <u>16-00546</u>
)	(Copyright Infringement)
Plaintiff,)	
)	COMPLAINT FOR COPYRIGHT
vs.)	INFRINGEMENTS AND DIGITAL
)	MILLENNIUM COPYRIGHT ACT
HAWAII BEACH HOMES, INC., a)	VIOLATIONS; EXHIBITS "A"- "B"
Hawaii Corporation; JOHN DOES 1-)	
10; JANE DOES 1-10; DOE)	
CORPORATIONS 1-10; DOE)	
PARTNERSHIPS 1-10; and DOE)	
ASSOCIATIONS 1-10,)	
)	
Defendants.)	
)	
)	
)	
)	
)	

**COMPLAINT FOR COPYRIGHT INFRINGEMENTS
AND DIGITAL MILLENNIUM COPYRIGHT ACT VIOLATIONS**

COMES NOW Plaintiff VINCENT KHOURY TYLOR, by his
attorneys, J. Stephen Street, Attorney at Law, and Dane Anderson, Attorney at
Law, LLC, and for his complaint alleges as follows:

PARTIES

1. Plaintiff VINCENT KHOURY TYLOR (“Plaintiff”) is a resident of the State of Hawaii.
2. Upon information and belief, Defendant HAWAII BEACH HOMES, INC. (“HBH”) is a Hawaii corporation with its principal place of business in Honolulu, Hawaii.
3. JOHN DOES 1-10, JANE DOES 1-10, DOE CORPORATIONS 1-10, DOE PARTNERSHIPS 1-10, and DOE ASSOCIATIONS 1-10 are named herein under fictitious names for the reason that, after investigation of the facts of this action, said Defendants’ true names and identities are presently unknown to Plaintiff except, upon information and belief, that they are connected in some manner with the named Defendant and/or were the agents, servants, employees, employers, representatives, co-venturers, associates, successors or assignees of the named Defendant who may be under a duty, contractually or otherwise, to pay Plaintiff compensation for loss incurred by the actions or omissions of the named Defendant and/or were in some manner related

to the named Defendant and that their “true names, identities, capacity, activities and/or responsibilities” are presently unknown to Plaintiff or his attorneys. To ascertain the full names and identities of JOHN DOES 1-10, JANE DOES 1-10, DOE CORPORATIONS 1-10, DOE PARTNERSHIPS 1-10, and DOE ASSOCIATIONS 1-10, Plaintiff’s counsel have investigated the facts alleged herein through, *inter alia*, interview of Plaintiff and inspection of the records in this matter. When the true names and capacities are ascertained, through appropriate discovery, Plaintiff shall move to amend this action to state the true names.

JURISDICTION AND VENUE

4. This is an action for preliminary and permanent injunctive relief and damages arising from HBH’s copyright infringements in violation of the United States Copyright Act, 17 U.S.C. §§ 101 *et seq.* and violations of the Digital Millennium Copyright Act (“DMCA”), 17 U.S.C. § 1202.

5. This Court has jurisdiction over the subject matter of this action under 28 U.S.C. § 1331 and § 1338(a).

6. Venue is proper in this district under 28 U.S.C. § 1391(b) and (c) and 28 U.S.C. § 1400(a).

FACTUAL ALLEGATIONS

7. HBH manages and controls a commercial website, at <http://www.hawaii-beachhomes.com/>, where customers can view information on HBH's vacation rentals business and the vacation rentals it offers for rent.

8. HBH managed and controlled a commercial web page on Facebook.com, at <https://www.facebook.com/HawaiiBeachHomes>, titled "Hawaii Beach Homes," to advertise and promote its business and vacation rentals, and to encourage users of that Facebook.com commercial web page to navigate to, or click on provided hyperlinks to be directly routed to, HBH's commercial website described in paragraph 7. HBH's commercial page on Facebook.com received over 3,000 "likes" by users.

9. Each photographic work at issue in this case is an original work entitled to copyright protection pursuant to the copyright laws of the United States, and each photographic work at issue is duly registered with the United States Copyright Office.

10. The nine (9) photographic works, image nos.: "O-05 Chinamans Hat"; "O-24 Makapuu"; "O-08 Waikiki from Top of DiamondHead"; "K-41 Tunnels Beach"; "O-06 Hanauma Bay Wide"; "O-01 Waikiki-Pink boat ORIGINAL VERSION"; "O-07 Waimea Falls"; "A-12-B LaniKai-girl"; and, "M-05 Kihei Beach", at issue in this case were created by Plaintiff, a professional photographer, who owns the copyrights to those works. The copyrights for those

photographic works were registered with the United States Copyright Office as 1) VA 1-696-555, effective December 17, 2009, and supplemented by form VA 1-432-741, effective June 20, 2011; and, 2) VA 1-759- 562, effective January 29, 2011, in the name of Plaintiff, who has exclusive rights and privileges in those photographic works under the United States Copyright Act. True and correct copies of the Certificates of Registration that relate to those photographic works are attached hereto as Exhibit “A.”

11. None of the said photographic works was a “work for hire.”

12. Plaintiff incurred substantial time and expense in creating the photographic works at issue, and Plaintiff licenses those photographic works for commercial and other uses.

13. Plaintiff discovered that HBH was using nine (9) of his photographic works at issue, without obtaining licenses or consent from Plaintiff, for its commercial purposes on its commercial website and Facebook.com commercial web page, as follows:

Image “**O-05 Chinamans Hat**” was used at:

Page URLs:

<http://www.hawaii-beachhomes.com/site/PropertyList/1627/DesktopDefault.aspx?PageID=1627>

<http://www.hawaii-beachhomes.com/Unit/Details/63005>

<https://www.facebook.com/HawaiiBeachHomes/timeline> (Posted two times)

https://www.facebook.com/HawaiiBeachHomes/photos_stream

<https://www.facebook.com/media/set/?set=a.231932193562927.52372.225847144171432&type=3>

<https://www.facebook.com/HawaiiBeachHomes/photos/pb.225847144171432.-2207520000.1442872673./481664705256340/?type=3&theater>

<https://www.facebook.com/HawaiiBeachHomes/photos/pb.225847144171432.-2207520000.1442872923./260846834004796/?type=3&theater>

Image URLs:

<http://pictures.escapia.com/SandSea/2308080399.jpg> (640 x 457 pixels)

https://scontentlax31.xx.fbcdn.net/hphotos-xtf1/v/t1.0-9/972319_481664705256340_1177214986_n.jpg?oh=1ff3b61eac916796cb30010087e2cbab&oe=56A8EDB9 (400 x 231 pixels)

https://scontentlax31.xx.fbcdn.net/hphotos-xaf1/v/t1.0-9/539770_260846834004796_140416961_n.jpg?oh=4f8c1608e291d30da040ef9bfe04d750&oe=569E62D5 (481 x 386 pixels)

Image “**O-24 Makapuu**” was used at:

Page URLs:

<https://www.facebook.com/HawaiiBeachHomes/timeline>

https://www.facebook.com/HawaiiBeachHomes/photos_stream

<https://www.facebook.com/media/set/?set=a.231932193562927.52372.225847144171432&type=3>

<https://www.facebook.com/HawaiiBeachHomes/photos/pb.225847144171432.-2207520000.1442871666./659723307450478/?type=3&theater>

Image URL:

https://scontent-lax3-1.xx.fbcdn.net/hphotos-xpf1/v/t1.0-9/10489619_659723307450478_5711126097839119185_n.jpg?oh=85013b073150392b3311ea9b2b8ef4ff&oe=569A7C9B (259 x 194 pixels)

Image “**O-08 Waikiki from Top of DiamondHead**” was used at:

Page URLs:

<https://www.facebook.com/HawaiiBeachHomes/timeline>

https://www.facebook.com/HawaiiBeachHomes/photos_stream

<https://www.facebook.com/media/set/?set=a.231932193562927.52372.225847144171432&type=3>

<https://www.facebook.com/HawaiiBeachHomes/photos/pb.225847144171432.-2207520000.1442871667./636922413063901/?type=3&theater>

Image URL:

https://scontentlax31.xx.fbcdn.net/hphotos-xta1/l/t31.0-8/10448659_636922413063901_3495307204348606332_o.jpg (1,280 x 960 pixels)

Image “**K-41 Tunnels Beach**” was used at:

Page URLs:

<https://www.facebook.com/HawaiiBeachHomes/timeline>

https://www.facebook.com/HawaiiBeachHomes/photos_stream

<https://www.facebook.com/media/set/?set=a.231932193562927.52372.225847144171432&type=3>

<https://www.facebook.com/HawaiiBeachHomes/photos/pb.225847144171432.-2207520000.1442872515./619177708171705/?type=3&theater>

Image URL:

https://scontentlax31.xx.fbcdn.net/hphotos-frc3/t31.0-8/10275492_619177708171705_1163006016802166679_o.jpg (1,600 x 1,200 pixels)

Image **“O-06 Hanauma Bay Wide”** was used at:

Page URLs:

<https://www.facebook.com/HawaiiBeachHomes/timeline>

https://www.facebook.com/HawaiiBeachHomes/photos_stream

<https://www.facebook.com/media/set/?set=a.231932193562927.52372.225847144171432&type=3>

<https://www.facebook.com/HawaiiBeachHomes/photos/pb.225847144171432.-2207520000.1442872672./489695307786613/?type=3&theater>

Image URL:

https://scontentlax31.xx.fbcdn.net/hphotos-ash2/t31.0-8/1147648_489695307786613_1729550336_o.jpg (1,600 x 1,200 pixels)

Image **“O-01 Waikiki-Pink boat ORIGINAL VERSION”** was used at:

Page URLs:

<https://www.facebook.com/HawaiiBeachHomes/timeline>

https://www.facebook.com/HawaiiBeachHomes/photos_stream

<https://www.facebook.com/media/set/?set=a.231932193562927.52372.225847144171432&type=3>

<https://www.facebook.com/HawaiiBeachHomes/photos/pb.225847144171432.-2207520000.1442872888./330299720392840/?type=3&theater>

Image URL:

https://scontentlax31.xx.fbcdn.net/hphotos-xfal/v/t1.0-9/376229_330299720392840_330212530_n.jpg?oh=0c21d2bd09351b9b4c98a838433b1636&oe=56611E86 (689 x 515 pixels)

Image **“O-07 Waimea Falls”** was used at:

Page URLs:

<https://www.facebook.com/HawaiiBeachHomes/timeline>

https://www.facebook.com/HawaiiBeachHomes/photos_stream

<https://www.facebook.com/media/set/?set=a.231932193562927.52372.225847144171432&type=3>

<https://www.facebook.com/HawaiiBeachHomes/photos/pb.225847144171432.-2207520000.1442872923./275555245867288/?type=3&theater>

Image URL:

http://scontentlax31.xx.fbcdn.net/hphotos-prn2/v/t1.0-9/555684_275555245867288_378638144_n.jpg?oh=6c0f22e3ac38436fbc3cc55dcfadd290&oe=5696C39E (601 x 432 pixels)

Image “**A-12-B LaniKai-girl**” was used at:

Page URLs:

<https://www.facebook.com/HawaiiBeachHomes/timeline>

https://www.facebook.com/HawaiiBeachHomes/photos_stream

<https://www.facebook.com/media/set/?set=a.231932193562927.52372.225847144171432&type=3>

<https://www.facebook.com/HawaiiBeachHomes/photos/pb.225847144171432.-2207520000.1442872924./253075781448568/?type=3&theater>

Image URL:

http://scontentlax31.xx.fbcdn.net/hphotos-prn2/v/t1.0-9/536142_253075781448568_270332681_n.jpg?oh=3f157d8e9ed304311a54e7ea00f629de&oe=5693D81E (550 x 412 pixels)

Image “**M-05 Kihei Beach**” was used at (shown in a web archive):

Page URLs:

<http://web.archive.org/web/20140305050645/http://www.hawaii-beachhomes.com/?>

<https://research.domaintools.com/research/screenshot-history/hawaii-beachhomes.com/#1>

Image URL:

http://web.archive.org/web/20140519085348im_/http://hawaii-beachhomes.com/Portals/_hawaii-beachhomes/images/default/splash.jpg (756 x 313 pixels)

HBH used these photographic works without obtaining licenses or consent from Plaintiff, thus violating his exclusive rights as the copyright owner to reproduce, adapt, display, distribute, and/or create derivative works under 17 U.S.C. §§ 101 *et seq.* A true and correct copy of each of these photographic works registered by Plaintiff along with copies of HBH's infringing uses are attached hereto as Exhibit "B."

14. Plaintiff's copyrighted photographic works at issue, where they are legitimately available for commercial licensing, bear his copyright management information in the form of a "Vincent K. Tylor" signature at the bottom corner of each photographic work at issue.

15. Upon information and belief, HBH intentionally removed or altered Plaintiff's copyright management information from his photographic works at issue for HBH's commercial uses, as described herein, without Plaintiff's authority or the authority of the law, and/or HBH distributed its infringing uses of Plaintiff's photographic works at issue, knowing that Plaintiff's copyright management information had been removed or altered without his authority or the authority of the law and knowing that it do not own the photographic works. True and correct copies of Plaintiff's photographic works at issue containing his copyright management information along with copies of

screenshots of HBH's infringing uses of the works with Plaintiff's copyright management information removed are shown in Exhibit "B."

16. HBH's use of eight (8) of Plaintiff's photographic work at issue on its Facebook.com commercial web page, described in paragraph 8, contributed to widespread distribution of those photographic works because users who viewed that Facebook.com commercial web page could easily distribute HBH's postings of those photographic works among other Facebook.com users or promote HBH's business by clicking on the "Like" button or "Share" button associated with those photographic works as they appeared on HBH's Facebook.com commercial web page. Each "Like" or "Share" action by a user caused the infringements to be distributed to other users or promoted HBH's Facebook.com commercial web page or its business. As shown in Exhibit "B", attached hereto, HBH's infringements at issue received "likes", "comments" and/or "shares" by users. HBH's Facebook.com commercial web page received more than 3,000 "likes" by users.

17. Plaintiff gave notice of the copyright infringements and DMCA violations described herein to HBH in October of 2015; however, Plaintiff and HBH were unable to resolve this matter, thus necessitating legal action.

**FIRST CAUSE OF ACTION:
COPYRIGHT INFRINGEMENTS**

18. Plaintiff restates and realleges each of the allegations contained in paragraphs 1-17 as if fully stated herein.

19. Plaintiff has all rights, title, and interest in the copyrights to the photographic works at issue as holder and owner of the copyrights, the use of which has not been licensed to HBH.

20. HBH has misappropriated Plaintiff's copyrighted photographic works at issue with knowledge that the photographic works did not belong to HBH and that it did not have license or consent from Plaintiff; HBH thereby engaged in unauthorized use, copying, distribution, and/or display of Plaintiff's copyrighted photographic works by using a total of nine (9) of Plaintiff's photographic works on HBH's commercial website and/or HBH's Facebook.com commercial web page, without obtaining licenses or consent from Plaintiff. HBH's acts constitute copyright infringement under the United States Copyright Act, 17 U.S.C. §§ 101 *et seq.* for which HBH is directly, contributorily, and/or vicariously liable, jointly, severally or in the alternative.

21. HBH's unlawful use of copies of Plaintiff's photographic works have diminished the value of the original photographic works by distributing and encouraging redistribution of those copies without identifying the photographic works as being the exclusive property of Plaintiff.

22. HBH's unlawful acts have been and are interfering with and undermining Plaintiff's ability to market Plaintiff's own original photographic

works, thereby impairing the value and prejudicing the sale or license by Plaintiff of his own photographic works.

23. Because HBH used Plaintiff's copyrighted photographic works without license or consent, infringing the exclusive rights of Plaintiff as the copyright owner, Plaintiff is entitled to have the infringing publications and any improperly acquired likenesses or images (however stored or recorded) impounded while this action is pending.

24. As a direct and proximate result of HBH's wrongful acts, Plaintiff has suffered and continues to suffer lost profits and damages.

25. Plaintiff is entitled to recover from HBH the damages he has sustained as a result of these wrongful acts. Plaintiff is presently unable to ascertain the full extent of the monetary damages he has suffered by reason of HBH's acts of copyright infringement.

26. Plaintiff is further entitled to recover from HBH any gains, profits, or advantages HBH obtained as a result of its wrongful acts. Plaintiff is presently unable to ascertain the full extent of the gains, profits, and advantages HBH has realized by its acts of copyright infringement.

27. Plaintiff is entitled to elect to recover from HBH statutory damages for each of its violations of Plaintiff's copyrights.

28. Plaintiff is further entitled to costs and reasonable attorneys' fees.

**SECOND CAUSE OF ACTION:
DIGITAL MILLENNIUM COPYRIGHT ACT VIOLATIONS**

29. Plaintiff restates and realleges each of the allegations contained in paragraphs 1-28 as if fully stated herein.

30. HBH intentionally removed or altered copyright management information from association with Plaintiff's photographic works at issue for its said uses, and/or distributed copies of those photographic works at issue knowing that Plaintiff's copyright management information had been removed or altered, without the authority of Plaintiff or the law, knowing, or having reasonable grounds to know, that the removal or alteration, and/or distribution, would induce, enable, facilitate, or conceal infringement of copyright.

31. HBH's acts constitute violations under the Digital Millennium Copyright Act, 17 U.S.C. § 1202, for which HBH is liable jointly, severally, or in the alternative.

32. Plaintiff is entitled to a preliminary and permanent injunction to prevent HBH from engaging in further violations of 17 U.S.C. § 1202.

33. Plaintiff is entitled to recover from HBH the actual damages suffered by him and any profits HBH has obtained as a result of its wrongful acts

that are not taken into account in computing the actual damages. Plaintiff is currently unable to ascertain the full extent of the profits HBH has realized by its violations of 17 U.S.C. § 1202.

34. Plaintiff is entitled to elect to recover from HBH statutory damages for each of its violations of 17 U.S.C. § 1202.

35. Plaintiff is further entitled to costs and reasonable attorneys' fees.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff VINCENT KHOURY TYLOR prays:

A. That this Court enter an injunction preliminarily and permanently enjoining and restraining HBH and its directors, officers, managers, members, agents, servants, employees, attorneys, and all persons in active concert or participation with HBH from infringing Plaintiff's copyrighted photographic works and from further violating 17 U.S.C. § 1202;

B. That the Court order any original infringing photographs, prints, separations, publications, copies, products, or materials bearing the photographic works at issue, digital data in any form and/or likenesses impounded and/or destroyed or disposed of in other reasonable fashion;

C. That HBH be required to pay such damages as Plaintiff has sustained and any profits HBH has gained in consequence of HBH's unlawful acts or, in the alternative, to pay statutory damages pursuant to 17 U.S.C. § 504(c) and 17 U.S.C. § 1203(c);

D. That HBH be required to pay costs, including reasonable attorneys' fees, to Plaintiff pursuant to 17 U.S.C. § 505 and 17 U.S.C. § 1203(b); and,

E. That Plaintiff be granted such other and further relief as the Court may deem just and proper.

DATED: Honolulu, Hawaii, October 4, 2016.

/s/ J. Stephen Street

J. STEPHEN STREET

DANE ANDERSON

Attorneys for Plaintiff

VINCENT KHOURY TYLOR